Calendar No. 994

100TH CONGRESS
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SENATE

REPORT
100-548

SETTLING CERTAIN CLAIMS ARISING OUT OF ACTIVITIES ON THE PINE RIDGE INDIAN RESERVATION

SEPTEMBER 26, 1988.—Ordered to be printed

Mr. INOUYE, from the Select Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1305]

The Select Committee on Indian Affairs, to which was referred the bill (S. 1305) having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

On page 7, strike lines 13 and 14.

On page 10, strike lines 1 and 3.

PURPOSE

The purpose of S. 1305 is to settle certain claims arising out of activities on the Pine Ridge Indian Reservation associated with the 1973 occupation of Wounded Knee, South Dakota.

SUMMARY OF EVENTS AND LEGAL PROCEEDINGS

From February 27, 1973 until May 8, 1973, the hamlet of Wounded Knee, South Dakota, located on the Pine Ridge Indian Reservation of the Oglala Sioux Tribe was occupied by members of the American Indian Movement and surrounded by Federal forces seeking to contain the occupation. Ingress and egress from the town was limited by Federal forces surrounding the occupied area, and as the occupation continued, residents of the town were encouraged by Federal officers to leave their homes and commercial businesses and to move out of the occupied area until the occupation could be brought to a peaceful conclusion.

S413-19

By resolution of the Senate on February 2, 1976 (S.Res. 378, 94th Congress, 2nd Session), claims for damages to and loss of property and personal injuries arising from the occupation of 1973, were referred to the United States Court of Claims. Prior to the referral of the cases to the Chief Commissioner of the United States Court of Claims, some effort was made to identify, by name and address, potential "innocent victim" claimants in order that they might be served with notice, as required by the procedural rules established for Congressional Reference cases, advising them that a claim could only be asserted by filing a petition with the clerk of the court in accordance with procedural rules. It became apparent in late 1976 that many potential claimants had not filed petitions with the court, and by order issued on October 12, 1976, the deadline for the filing of petitions was extended to October 31, 1977. In all, 122 claimants filed petitions, but during the course of proceedings, seven (7) plaintiffs were dismissed with prejudice. Of the 115 petitions remaining, 99 petitions represented claims filed by individuals, the majority of whom were Indian people residing on the Pine Ridge Indian Reservation in February, 1973. Twelve petitions were filed by corporations or companies. Single petitions were filed by a local community, a church, a Housing Authority, and an Indian tribe.

The plaintiffs, certain residents of the Pine Ridge Indian Reservation in South Dakota, disavowed any claim based on a legal right of recovery, and predicated their right to recover damages on facts offered in support of a claim for purely equitable relief. The plaintiffs contended that the United States' actions and/or failure to act relative to the occupation of Wounded Knee were causally and primarily responsible for the damages and losses suffered by them as a result of the occupation. The plaintiffs' claim for equitable relief against the United States was premised upon the following claims:

(1) The government mishandled the Washington, D.C. takeover of the Bureau of Indian Affairs building in November, 1972, the effect of which provided the impetus for the subsequent occupation of Wounded Knee.

(2) The government failed to take steps to prevent the occupation at Wounded Knee in spite of advance warnings that there was an Indian build-up in South Dakota, that Indian demonstrations would resort to violence, and that the occupation target of the Indians was Wounded Knee.

(3) The government decision to establish and maintain roadblocks on all roads running to Wounded Knee led to an unwarranted escalation and prolongation of the demonstrations, prevented residents from returning to Wounded Knee to protect their homes and property and was generally so inexpertly implemented that throughout the occupation the occupying forces were continuously reinforced, reprovisioned and rearmed in spite of the roadblocks. Thus, the government's establishment of roadblocks and the manner in which they were maintained and operated was responsible in no small measure for the damages and losses suffered by plaintiffs.

(4) The improper handling of the Wounded Knee occupation by federal officers allowed the occupation to continue for 71 days when proper handling would have effected a much earlier termination of the occupation.

(5) There was a failure to achieve coordination among the various law enforcement agencies at Wounded Knee thereby prolonging the occupation.

(6) The presence of the federal forces contributed to a breakdown in routine law enforcement functions on the Pine Ridge Reservation.

(7) The constant shift in the leadership of the government forces at Wounded Knee prolonged the occupation by hindering the development of a cohesive strategy for resolving the occupation.

(8) By bulldozing Indians bunkers after the occupiers were dispossessed but before the evidence in them was removed, the United States Marshals destroyed evidence which could have led to the recovery of some personal property.

(9) The United States must be held to a higher standard of care and responsibility in its dealings with Indians due to the unique trust relationship between Indian tribes and the federal government; the government abused this trust in its handling of the occupation.

(10) The government must be held to have assumed the obligations of protecting life and property within Wounded Knee during the occupation and failed to do so.

(11) United States Marshals wrongfully destroyed personal property belonging to the plaintiffs.

In disposing of the plaintiffs' claims, the Court of Claims reduced the claims to three basic contentions as outlined below:

(1) The court rejected plaintiffs' claims that the government mishandled the November, 1972, takeover of the Bureau of Indian Affairs (BIA) building in Washington, D.C. by granting limited amnesty to those occupying the building and providing travel money to the occupiers to return to their homes, thereby setting a precedent that led to the takeover of Wounded Knee in February, 1973. The court found that on the record before the court, every aspect of the government's handling of the Washington, D.C. BIA building takeover was reasonable and appropriate under the circumstances. The court found that there was no evidence that the government's use of a limited amnesty and payment of travel money to end the BIA takeover had any undesirable precedential effect or in any way caused the takeover of Wounded Knee. The court found that its rejection of this contention was supported by expert testimony in the record.

(2) The court also rejected plaintiffs' claims that during the period from November 8, 1972, (the date of the dispossession of the Washington, D.C. BIA building) and Februrary 27, 1973, (the night the Wounded Knee takeover began) the government could have and should have acted to prevent members of the American Indian Movement from taking over the hamlet of Wounded Knee. The court found that the government's efforts between November 8, 1972, and February 27, 1973, in monitoring and gathering intelligence on and protecting against militant Indian activity were, on the record before the court, reasonable, professional, complete, and within the constraints of the Constitution, pursued with due diligence. The court found that there was no evidence that government officials knew ahead of time that Wounded Knee was the target of the American Indian Movement. The court also found

that there was no evidence that the government could have or should have done more to protect against such a takeover, giving due regard to the principles of the United States' democratic society.

(3) The court also rejected plaintiffs' contention that the government's failure to use force to end the occupation of Wounded Knee early, and thereafter, its handling of negotiations and related operations at Wounded Knee, prolonged the occupation and thereby caused property damage. The court found that on the record before the court, the government's decision not to use force but rather to negotiate the dispossession of Wounded Knee was a reasonable one under the circumstances. The court found that every aspect of the government's implementation of its negotiating stance and related operations was accomplished in a reasonable and professional manner. The court also found that expert testimony in the record further supported rejection of plaintiffs' contention.

The court concluded that its findings removed the predicates necessary for the plaintiffs to have any basis for equitable claims against the United States. Recognizing that the plaintiffs did incur property damages and losses as a result of the occupation of Wounded Knee by militant forces of the American Indian Movement, the court still found that the United States should not be deemed legally and/or equitably liable for those damages since the reaction and response of the government to the occupation was, in the court's view, prompt, reasonable and honorable. The court noted that expert testimony indicated that the government's conduct in terminating the Wounded Knee occupation comported most favorably with present-day accepted and recognized standards, policies, practices and procedures utilized in handling hostage and barricade situations. Finally, the court concluded that any monetary award to plaintiffs for damages arising out of the Wounded Knee occupation would be a gratuity.

Given the findings of the Court of Claims, legislatively authorized equitable relief for those who suffered damages and losses arising out of the occupation is the only means of assuring that the innocent victims of Wounded Knee are compensated for their losses.

BACKGROUND

The Sioux Treaty of 1868 marked the conclusion of wars between the United States and the Sioux, Cheyenne, and Arapaho tribes. Under the terms of the Treaty and the provisions of the Dawes Allotment Act of 1887, 25 U.S.C. 331, and the Indian Reorganization Act of 1934, 25 U.S.C. 461, the present Pine Ridge Indian Reservation was established. The Pine Ridge Indian Reservation is bordered by the states of South Dakota and Nebraska and the Rosebud Sioux Indian Reservation. The Reservation consists of 1,662,437 acres, of which 402,889 acres are held in trust for the tribe by the United States; another 1,168,240 acres are tribal trust allotments; and 91,208 acres are owned by the Federal government. Of the total area, four percent of the land is farmed, two percent is badlands, and the remaining 94 percent is used for the production of livestock. As of July, 1973, there were approximately 11,478 Indian

people living on or near the reservation. The principal cities, towns and hamlets on the Reservation include Pine Ridge, the seat of the Oglala Sioux tribal government, Manderson, Porcupine, Kyle, Wamblee, Martin and Wounded Knee. In 1973, the hamlet of Wounded Knee consisted of approximately 92 families totalling 374 persons. The principal buildings in Wounded Knee at the time of its occupation by members of the American Indian Movement were a trading post, museum, and outbuildings, homes owned by the Gildersleeve and Czywczynski families; and an Episcopal church, a Roman Catholic church, and a Church of God church, a cluster housing project consisting of approximately 20 detached houses; and scattered houses throughout the area.

The Oglala Sioux Tribe of the Pine Ridge Reservation is governed by a constitution and by-laws, approved by referendum vote of the Oglala Sioux electorate on December 14, 1935, in accordance with section 16 of the Indian Reorganization Act of 1934. In 1973, the tribal government consisted of the elected ten-member Oglala Sioux Council and an elected tribal chairman.

The events which give rise to the equitable relief that is authorized in S. 1305 occurred between February 27, 1973 and May 8, 1973, when members of the American Indian Movement occupied the hamlet of Wounded Knee. The events leading up to the occupation of Wounded Knee are set forth in detail in the findings of fact by the U.S. Court of Claims in *The Innocent Victims of the Occupation of Wounded Knee, South Dakota* v. *United States,* Cong. Ref. 4–76. When, approximately two weeks before the occupation occurred, caravans of out-of-state cars began coming into Rapid City, South Dakota, onto the Pine Ridge Reservation, and in response to rumors of possible violence, the Bureau of Indian Affairs, the agency responsible for local law enforcement, informed the United States Marshal Service that Bureau of Indian Affairs (BIA) personnel had neither the experience nor expertise to assess the situation and current developments in the Pine Ridge area, and urgently requested that the United States Marshal Service (USMS) send two or three of its best men to Pine Ridge to assess the situation and survey the facility and manpower resources. The BIA had previously brought in about 20 Indian law enforcement officers to reinforce the 13 already on duty. The Marshal Service was requested to advise the BIA whether additional resources were needed. On the evening of February 12, 1973, the United States Marshal Service was directed by the Deputy Attorney General's office to deploy SOG personnel in support of the BIA building on the Pine Ridge Reservation. Sixty-eight deputies in the SOG were activated and ordered to the Pine Ridge Reservation. The SOG force was a group of 100 selected volunteer United States Marshals, whose activities involved special assignments throughout the United States. The SOG force was trained in the art of confrontation management and was comparable to a SWAT team. On February 27, 1973, at about 1:00 p.m., approximately 200 members and supporters of the American Indian Movement (AIM) assembled in Calico Hall on the Pine Ridge Reservation. About 50 of these persons were reportedly armed with rifles, shotguns, pistols, clubs, and knives. During the afternoon, about 200 members of this group left Calico Hall in a caravan of cars that was headed south on the Reservation. The

caravan went through Pine Ridge and reportedly was on its way north to Porcupine. This route would take the caravan through the hamlet of Wounded Knee. The caravan was under surveillance by FBI special agents and its progress on the Reservation was noted by the USMS. The intelligence that the FBI was able to obtain as to the sustance of the meetings at Calico Hall and the demeanor of the caravan as it progressed through the Reservation conveyed an impression of a peaceful undertaking.

Sometime between 7:00 and 8:00 p.m. on February 27, 1973, an estimated 200 armed AIM members and supporters arrived in approximately 60 automobiles at the Wounded Knee Trading Post and Museum in Wounded Knee, South Dakota. Members of the group were reported to have shot out the dusk-to-dawn lights which illuminated the area of the Trading Post and Museum and the home of Clyde and Agnes Gildersleeve that was directly opposite and across the road from the Trading Post. AIM personnel also allegedly fired shots at BIA police who tried to enter Wounded Knee to investigate the disturbance, and were reported to have fired at a fire truck which was responding to a fire in Wounded Knee.

During the first several days of the occupation, a total of nine roadblocks were established and reinforced with United States Marshals and some military equipment. FBI agents were instructed to stop all cars exiting from the Wounded Knee area and unless the occupants could explain why they were coming out of Wounded Knee at that time, such as showing they were residents fleeing for their lives or were tourists who might have been caught up in the middle of the situation, the occupants would be subject to arrest.

Following the seizure and occupation of Wounded Knee, the occupiers took 11 hostages. These individuals were living in the immediate area of the Trading Post store at the time of the initial takeover of Wounded Knee and after their hostage status was established, were able to witness the looting of the store by many people.

On March 1, 1973, United States Senators Abourezk and McGovern arrived with aides at the BIA building in Pine Ridge. After consultations, the Senators and law enforcement officials agreed that no meeting would be held with the occupiers until the hostages were released. The Senators later met with the AIM leaders to hear their grievances and respond to their demands.

During the first days of the takeover, BIA and FBI units reported being fired upon by occupants of Wounded Knee. Also, during this period, the Indians inside Wounded Knee were observed digging trenches and bunkers near the Catholic Church in Wounded Knee. In order to facilitate the acquisition of military equipment for use by law enforcement officials at Wounded Knee, two Department of Defense observers were assigned to Wounded Knee. The most notably military equipment acquired and used at Wounded Knee were 15 armed personnel carriers and 100 M–16 rifles which were on site by March 4, 1973.

On March 3, 1973, attorneys with the Native American Rights Fund arrived and met with AIM leaders. The lawyers reported that no one was being held hostage, and that it appeared that AIM might be willing to end the matter if only the AIM leaders of the

takeover were charged. By March 4, 1973, the AIM occupiers were seen using bulldozers and backhoes to dig new fortifications and to strengthen existing ones. AIM occupiers continued to fire on federal officials. In light of the continuing gunfire on the government's perimeter positions, more armored personnel carriers were requested on March 4, 1973, in order to provide effective protection for federal personnel manning the roadblocks.

Negotiation efforts were ongoing throughout the occupation period, with various Federal officials coming into the area to meet with the occupiers. Because of the government's use of special forces and sophisticated military weaponry, one of the victims' claims in the Claims Court was that the government escalated the takeover into a paramilitary action. The plaintiffs in the Claims Court also contended that government roadblocks generally prevented Wounded Knee residents who were not inside the perimeter from returning to their homes, and that residents who left Wounded Knee after March 12, 1973, were not allowed to return through the roadblocks. As a result of the government access policy preventing residents from returning to their homes, the victims contend that they suffered property damage and theft.

The Court noted that a number of the displaced residents of Wounded Knee desired to return to their homes during the occupation and generally were prevented from doing so by the federal roadblock and access policy. Some of the residents wanted to enter the perimeter area to protect their homes and property from AIM occupiers. Others had family members who had remained inside Wounded Knee and there was concern for their safety. Still others wished to return to their homes because they either did not have friends or relatives with whom they could stay or they simply did not desire to stay with others or in the temporary accommodations set up in public buildings on the Reservation.

The detailed summary of the events which transpired between the February 27, 1973, takeover of Wounded Knee and the May 8, 1973, surrender of the occupied area are set forth in over 250 pages of Findings of Fact by the Court of Claims. After the May 8th dispossession, the government was concerned that the AIM bunkers might be dangerous, and thus the government brought bulldozers into the formerly occupied area and bulldozed trenches and fortifications, allegedly destroying much private property and possible probative evidence in the process. Personal property was also alleged to have been confiscated as souvenirs at this time by those responsible for "sweeping" the area to make sure that it was safe.

In the Court of Claims the plaintiffs asserted a claim for equitable relief for the damages they suffered based on the government's access to information that should have led the government to know that the Wounded Knee takeover was imminent, and that the government should have acted to prevent AIM from taking over the hamlet of Wounded Knee. The plaintiffs also contended that the actual occupation of Wounded Knee lasted too long, and that the government's failure to use force to end the occupation early, and related operations at Wounded Knee, were to blame for prolonging the occupation and thereby caused the property damage for which the plaintiffs claim entitlement.

The Court of Claims concluded that while it was true that the plaintiffs did incur property damages and losses as a result of the occupation of Wounded Knee by militant forces of AIM, the United States should not be deemed legally and/or equitably liable for the damages since the government's reaction and response to the occupation was prompt, reasonable and honorable.

OCCUPATION OF WOUNDED KNEE [1]

On February 27, 1973, between 7:00 and 8:00 p.m. approximately 200 armed members and supporters of the American Indian Movement (AIM) arrived in approximately 60 automobiles at the Wounded Knee Trading Post and Museum in the hamlet of Wounded Knee, South Dakota. AIM militants entered the rear of the Trading Post and opened the front door from the inside, permitting AIM members to enter. Two armed guards were placed at the entrance to the Trading Post as soon as entrance was made. AIM occupiers then proceeded to enter the Trading Post and exit with armloads of merchandise, loading it into vans which were parked outside. This merchandise consisted of guns, food, Indian artifacts, and pottery. After burglarizing the Trading Post and Museum, AIM militants proceeded to vandalize and destroy homes and property in the area, and rounded up eleven residents at gunpoint and declared them to be "political prisoners and hostages."

Because of insufficient manpower, the only option recognized as available to government officials under the circumstances was a stop-gap measure—the establishment of roadblocks on the four primary roads in and out of Wounded Knee. The original purpose behind establishing the roadblocks was to prevent the militants from leaving Wounded Knee. However, it became immediately apparent that it would be impossible to seal the perimeter since the terrain would allow ample opportunity and cover to anyone wishing to slip in or out. Rather, the roadblocks quickly became a focal point for provocation between government officials and AIM forces, and in many cases, prevented the residents of Wounded Knee from returning to their homes, leaving their property unprotected. Further, the decision of government officials to adopt a wait-and-see posture and maintain the roadblocks, rather than affirmatively act to evict and arrest the militants during the early days of the occupation, allowed the militants to organize their defenses, to "dig-in" and to fortify their defensive positions making forcible eviction a progressively less viable option. Thus, positions on both sides hardened, and the confrontation at Wounded Knee which had begun as a demonstration developed into a siege.

On February 27, 1973, Claimant 95, Robbins & Stearns Construction Co. was in the process of building 235 units of housing in the Wounded Knee area. In connection with its building operation, R&S maintained construction equipment and supplies on a construction site approximately one mile from the Wounded Knee Trading Post. In addition to its own equipment and supplies, that of certain subcontractors were also maintained on the site. The

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[1] This synopsis was compiled from pleadings and documents presented in the United States Court of Claims case, Congressional Reference 4-76.

equipment and supplies remained on the site during nonworking hours. At the time that Wounded Knee was seized, R&S had equipment on the Wounded Knee housing site, including a forklift, a bulldozer, a front end loader, and numerous smaller hand tools. Additionally, subcontractors had stored a tractor and a backhoe on that site. R&S also had on the Wounded Knee housing site building supplies including: sufficient lumber and plywood to frame 25 houses; exterior siding and sheeting, wall sheeting, roof sheeting, interior partition material, insulation, and shingles; and masonry block, masonry mortar material, sand and bags of masonry cement sufficient to complete 15 houses foundations.

R&S maintained a bunk house and supervisor at the Wounded Knee housing site, R&S personnel were living on that site at all times, and R&S maintained its equipment and building supplies on the site. On the morning of February 28, 1973, when no additional workmen had arrived and the R&S employees on site were unable to make phone contact with R&S managing personnel, they determined that they would leave the Wounded Knee site. Within two to three minutes after leaving the housing site, approximately one mile from that site, they were stopped at a roadblock consisting of two cars parked adjacent to the road. From the time that these Wounded Knee site employee exited through that roadblock on the morning of February 28, R&S personnel were consistently denied entrance to the occupied area despite repeated attempts and requests to enter to recover equipment and supplies, thereby affording the militants free access to that material for use in building bunkers and fortifying their defensive positions. This resulted in R&S Construction Company's loss of equipment and materials.

R&S Construction Company was not alone in its denial of access to Wounded Knee. While the government policy with respect to allowing residents of Wounded Knee access to the occupied area changed from time to time, for the most part, residents and property owners were denied all access to the occupied area. Many were consistently denied access despite repeated requests to enter the occupied area to remove or protect their property. Government officials made it clear to local residents that they were to stay out of the area and were not to attempt to cross the roadblocks. Failure to follow this policy would result in their arrest.

During the occupation, Claimant 83, James and Jeanette Czywczynski, owners of the Wounded Knee Trading Post and Museum, Claimant 98, Sioux, Inc., made at least six requests to gain assistance in saving property located within the occupied area. In response, they were denied assistance and advised that if they attempted to cross the roadblocks they would be arrested.

The roadblocks were removed only once on March 10th, when federal officials concluded that it might prove wise to withdraw the roadblocks since they seemed to serve as a symbolic center for AIM militants without being effective in stopping movement in and out of Wounded Knee. Therefore, on the 10th, at approximately 2:00 p.m., the federal forces including the Armed Personnel Carriers (APC) were withdrawn from the area of Wounded Knee. Residents of Wounded Knee were able to travel freely to and from their homes.

However, the roadblocks were reimposed on March 12th at approximately noon. This was done without forewarning the residents of Wounded Knee, so that some were caught out of Wounded Knee away from their homes and families. The federal officials stated that the reimposition was necessary because the Indians holding Wounded Knee had taken advantage of the free access to fortify their positions with more weapons and ammunition.

From the beginning of the occupation, the federal officials continually attempted to negotiate a resolution to end the occupation. There were negotiating sessions held for days and involving AIM leaders, federal officials, church officials, traditional headsmen of the Sioux, Congressional leaders and other nationally known activists. However, as the days turned into weeks and the weeks to months, it was the residents of Wounded Knee who suffered the most.

The following paragraphs reflect the experiences of various residents of Wounded Knee in connection with their inability to gain access to the occupied area and what occurred to their families during the occupation. Each is taken from statements made by the residents either during or subsequent to the occupation.

"I live in Wounded Knee and I have not been able to go home for ten or mre days. This is due to the roadblocks and such. We live and work in Wounded Knee, we would like to be able to come and go as we please. Also, all of our personal property that we have not been able to check on or even if we have anything left. We have been going from place to place here in Pine Ridge and it is hard especially on our children." (Claimant 18, *Patrick Pumpkin Seed*—March 22, 1973).

"My home is in Wounded Knee, all I own is there and some things cannot be replaced that I value and that is why I would like to go home.

Where I am at, is not like my own home. No privacy, lack of all my needs for my family. No place for my other children to come to." (Claimant 21, *Lillian Boltz Sitting Eagle*—March 23, 1973).

Claimant 20, Eva Red Star, and her family remained in Wounded Knee at their residence until March. Learning of an upcoming blizzard they left to obtain groceries.

She and her husband, Paul Red Star, left with Patricia Red Star, their granddaughter. They purchased their groceries in Whteclay, Nebraska and then attempted to re-enter Wounded Knee.

They attempted to enter through the roadblock on Highway 18 and were denied entry. They then traveled to the Manderson roadblock, Porcupine roadblock and finally to the Denby roadblock. At each location they were refused entry into Wounded Knee.

They then returned to Nebraska, Rushville and then Gordon, attempting to find a motel room. They were unsuccessful and then attempted in the storm to go back to Wounded Knee. The car slid in the ditch and they were forced to spend the night beside the road.

They proceeded to Pine Ridge the next morning and went to the Holy Cross Guild Hall where they staryed for the rest of the occupation.

Eva Red Star tried five times to return to Wounded Knee and each time was informed that even though she was a resident she could not return.

The sixth time she attempted to enter was after Easter, when Clyde Gildersleeve told her that a house had been burned. She went to the Manderson roadblock and disregarding officers' warnings, she went through the roadblock and into Wounded Knee to her home. At that point she noticed that cars were burned, cow hides and horse hides were in her yard; she also found her cat and chickens dead. The houses were also ransacked.

She left after viewing the home and did not return again until May, after the occupation. At that point the condition of her home had worsened. (Claimant 20, *Eva Red Star*—February 4 1980).

On the evening of the takeover, Nettie Two Two, Elmer Two Two and Elizabeth Breast, Claimant 24 and Claimant 23, were required to take a relative back to Manderson. When they left Manderson to return to Wounded Knee, there was a roadblock established on the Manderson Road. They were unable to gain entry to Wounded Knee that evening.

The next day they tried to enter Wounded Knee by the Denby Road roadblock. The law enforcement officials indicated they could not enter Wounded Knee.

The following day, they tried the Porcupine Road roadblock and were again turned away.

On March 12th, they were allowed entrance through the Porcupine Road roadblock and instructed to come out the same night.

Instead they stayed overnight and left on March 13th, going out by the Highway 18 roadblock. At that time, they left their possessions because it was their belief that the situation was calmer and that their possessions were not in danger.

Prior to being allowed to enter on March 12th, they had tried repeatedly the Manderson, Porcupine and Denby roadblocks. Each time even though they had proper identification, the law enforcement officers indicated that they could not go into their home.

They then went to Eli, Nebraska and remained there until the end of the occupation. (Claimants 24, *Nettie Two Two, Elmer Two Two* and Claimant 23, *Elizabeth Breast*—January 24, 1980).

The morning after the takeover, Warfield Moose, Claimant 17, proceeded to the roadblock on Denby Road where he was searched by approximately fifteen U.S. Marshals.

He was refused entry to Wounded Knee from the day after the occupation began until the roadblocks were down. While they were down, he was able to check on his home.

Only once after March 12th was he allowed to enter Wounded Knee. On that occasion, the federal officers agreed to allow him, his wife and his father to go into Wounded Knee for 90 minutes.

He went into Wounded Knee and to his home on this occasion and was able to see that only foodstuffs had been taken from his home.

That was the only time after March 12th that he was able to gain entry into Wounded Knee, though he made repeated requests at all of the roadblocks due to the rumors that his home had been ransacked.

When the occupation was over and he was allowed to return to his home, it was ransacked and unfit to live in.

After dispossession was completed on May 8, 1973, residents forced from their homes were permitted to enter the area. (Claimant 17, *Warfield Moose*—January 17, 1980).

On May 7, 1973, the occupation of Wounded Knee ended with a negotiated agreement reached between the leaders of AIM and representatives of the federal government. The dispossession of Wounded Knee was achieved on May 8, 1973. One hundred and twenty-nine persons came out of Wounded Knee. Only thirty-three were residents of Wounded Knee. These residents were provided with food and drink furnished by the American Red Cross. However, other residents were still denied entry to Wounded Knee by the four roadblocks maintained by the U.S. Marshals Service. On May 9, 1973, the remaining residents were allowed to return to their community as it had been left behind. The Trading Post, which had burned to the ground on April 29th, was a mass of wreckage. Several homes were burned out shells. Garbage and trash covered the area. It was then up to the residents of Wounded Knee to try and restore their lives, homes and community to a liveable condition.

SECTION-BY-SECTION ANALYSIS

Section (a) provides for a full settlement of all legal and equitable claims against the United States arising from the occupation at Wounded Knee at Pine Ridge in 1973 by directing the Treasury to pay specified amounts to all claimants whose claims were certified to the Senate by the U.S. Court of Claims in response to S. Res. 387 (94th Congress, August 9, 1976). The section lists 113 claimants and the amounts due to each. Two have been deleted by amendment because the claims were not, in fact, actually validated by the claims court.

Section (b)(1) sets a limit of 10 percent of any payment that may be made to an attorney for services rendered in connection with the claim.

Section (b)(2) provides that payments are not subject to any federal, state or local tax nor may payments be considered income in determing eligibility for assistance under the Social Security Act or any other federally-assisted program.

Section (c) authorizes payment to the Dakota Plains Legal Services for services rendered in connection with the proceeding in the Court of Claims under S. Res. 378. (25 U.S.C. 2509).

LEGISLATIVE HISTORY

S. 1305 was introduced by Senators Daschle and Pressler on June 2, 1987 and was referred to the Select Committee on Indian Affairs. The Committee did not hold a hearing on S. 1305, since a hearing was conducted in the 99th Congress (May 7, 1986) on S. 2260, an identical bill introduced by Senator Abdnor on March 27, 1986.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The select Committee on Indian Affairs, in open business session on June 17, 1987, by a unanimous vote and with a quorum present,

recommends that the Senate pass S. 1305, with technical amendments.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1305, as evaluated by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 27, 1988.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC 20510.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1305, a bill to settle certain claims arising out of activities on the Pine Ridge Indian Reservation, as ordered reported by the Senate Select Committee on Indian Affairs, June 17, 1987. We estimate that enactment of this bill would result in outlays by the federal government of about $1.7 million in fiscal year 1989.

This legislation authorizes and directs the Secretary of the Treasury to pay certain claims resulting from activities on the Pine Ridge Indian Reservation. The Secretary is also authorized and directed to pay compensation to the Dakota Plains Legal Services for services rendered. The payments are specified in the bill and total about $1.7 million. This is direct spending authority and would not require subsequent appropriation action.

Enactment of this bill would result in no additional cost to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1305, as amended, will have no impact on regulatory or paperwork requirements.

EXECUTIVE COMMUNICATIONS

The Committee received a legislative report on S. 1305 from the Department of the Interior, as set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC 20240, June 16, 1987.

Hon. DANIEL K. INOUYE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is to present our views on S. 1305, a bill "To settle certain claims arising out of activities on the Pine Ridge Indian Reservation."

We oppose enactment of S. 1305.

S. 1305 is essentially a private relief bill. The bill would compensate 113 individuals and businesses (who were plaintiffs in a prior legal action) for amounts ranging from $731 to $490,934 each for personal injuries or damages to their property during the occupation of Wounded Knee, South Dakota, which occurred between February 27, 1973, and May 8, 1973. S. 1305 would also provide $26,486.44 to the Dakota Plains Legal Services, formerly South Dakota Legal Services Corporation, for services provided.

The claimants have disavowed any claim based on a legal right of recovery and instead attempted to build a case in support of a claim for purely equitable relief. The time periods involved in their claims began with the incidents leading up to and including the November 4, 1972, takeover of the Bureau of Indian Affairs (BIA) building in Washington, D.C., and continued through the occupation of Wounded Knee, South Dakota, in early 1973. The claimants have contended that the United States actions, or failures to act, were responsible for the damages and losses suffered by them as a result of the Wounded Knee occupation.

The United States Court of Claims completed a thorough investigation and analysis of the claims made by the claimants. The Court of Claims report entitled "The Innocent Victims of the Occupation of Wounded Knee, *South Dakota* v. *The United States* (Cong. Ref. 4–76), Findings of Facts and Recommended Conclusions to Accompany the Opinion of the Trial Commission filed June 10, 1981" concluded:

"The above ultimate conclusions remove the predicates necessary for plaintiffs to have any basis for equitable claims against the United States. While it is true that plaintiffs did incur property damages and losses as a result of the occupation of Wounded Knee by militant forces of AIM (American Indian Movement), the United States should not be deemed legally and/or equitably liable for said damages since its reaction and response to the occupation was prompt, reasonable and honorable. Expert testimony indicated that the government's conduct in terminating the Wounded Knee occupation comported most favorably with present-day accepted and recognized standards, policies, practices and procedures utilized in handling hostage and barricade situations. Under such circumstances, any monetary award to plaintiffs for damages arising out of the Wounded Knee occupation would be a gratuity."

Although the Court of Claims has determined that the monetary damages suffered by the claimants amounted to about $1,600,000, the findings referenced above indicate that compensation from the Federal Government is not appropriate in this case.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Ross O. Swimmer,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds that S. 1305 effects no change in existing law.

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